

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 25X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC. — DISCONTINUANCE OF  
TRACKAGE RIGHTS EXEMPTION — IN SUSQUEHANNA COUNTY, PA AND BROOME,  
TIOGA, CHEMUNG, STEUBEN, ALLEGANY, LIVINGSTON, WYOMING, ERIE, AND  
GENESEE COUNTIES, NY

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: February 3, 2005

By decision served on January 19, 2005, the Board granted authority for the discontinuance of overhead trackage rights by Delaware and Hudson Railway Company, Inc. (D&H), over approximately 229.5 miles of railroad line owned and operated by Norfolk Southern Railway Company (NS) between Lanesboro, PA, and Buffalo, NY (January 19 decision).<sup>1</sup> The authority was scheduled to become effective on February 18, 2005, unless an offer of financial assistance (OFA) to subsidize continued rail service was filed on or before January 28, 2005.

CNJ Rail Corporation (CNJ) has filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase D&H's trackage rights between milepost 210.9 ± in Binghamton and milepost 419.9 ± in Buffalo, together with such interchange and yard facilities required for service. Canadian Pacific Railway Company and D&H, jointly, and NS oppose the OFA and have filed motions to dismiss or reject it.

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<sup>1</sup> Specifically, D&H was granted authority to discontinue overhead trackage rights on the following lines: (1) NS's line between milepost 189.8± in Lanesboro and CP Coles at milepost 210.9± in Binghamton, NY; (2) NS's Southern Tier Line between milepost 217.0± in Binghamton, and milepost 419.8± in Buffalo; (3) NS's Bison Running Track between the point of connection with the Southern Tier Line at milepost 419.8± and the point of connection with the lines of CSX Transportation, Inc. (CSXT), at milepost 423.3± in Buffalo (including NS's SK Yard, which D&H currently operates under an agreement between D&H and Consolidated Rail Corporation dated February 1, 1984), a distance of approximately 3.5 miles; and (4) NS's Howard Street Running Track between the point of connection with the Bison Running Track at milepost 420.15± and the point of connection with the lines of CSXT at milepost 422.3±, a distance of approximately 2.15 miles.

The OFA is fundamentally flawed and must be rejected. First, it should be noted that CNJ is seeking to acquire through the OFA process rights that are geographically broader than those for which D&H obtained discontinuance authority. Second, and more importantly, even if the OFA had not exceeded the geographical limits of the trackage rights authorized for discontinuance, the OFA would have to be rejected because, in the January 19 decision, the Board, following longstanding precedent, stated that OFAs for discontinuance of trackage rights are limited to subsidies to provide continued rail service. Here, as CNJ is not seeking to subsidize D&H's operations under the trackage rights, the OFA process is not available to it. The Board strictly construes the OFA provisions. Chicago and North Western Transp. Co. — Abandonment, 363 I.C.C. 979, 980 (1981). The OFA will therefore be rejected.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CNJ's OFA to purchase a portion of D&H's trackage rights is rejected.
2. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary